

**REMARKS**

Claims 22 and 24 were examined by the Office, and in the final Office Action of December 30, 2008 all claims are rejected. With this response new claims 25-28 are added. All new claims are fully supported by the specification as originally filed. Support for the new claims can be found at least from page 8, line 24—page 9, line 3. Applicant respectfully requests reconsideration and withdrawal of the rejections in view of the following discussion.

This response is submitted along with a Request for Continued Examination (RCE).

**Claim Rejections Under § 103**

On page 2 of the Office Action, claims 22 and 24 are rejected under 35 U.S.C. § 103(a) as unpatentable over Hiroshi (JP 11-342202) in view of Katano et al. (JP 10-278982). Applicant respectfully submits that claim 22 is not disclosed or suggested by the cited references, because the cited references fail to disclose or suggest all of the limitations recited in claim 22. The cited references at least fail to disclose or suggest that a product contained in the device has 20 to 70% by weight of liquefied gas, as recited in claim 22. For at least this reason, claim 22 is not disclosed or suggested by the cited references.

The Office acknowledges on page 2 that Hiroshi does not teach that the product contained in the device has 20 to 70% by weight of liquefied gas. The Office also acknowledges on page 3 of the Office Action that Katano also fails to teach this limitation of claim 22. However, the Office further states on page 3 that “it is well within the skill of an artisan in the field to determine the optimum amounts.” A statement that modifications of the prior art to meet the claimed invention would have been “well within the ordinary skill of the art at the time the claimed invention was made” is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references. See MPEP § 2143.01. The Office’s assertion to modify the references to arrive at the claimed limitations is in direct contraction to the direction

provided by the MPEP. The Office has essentially ignored the limitations of claim 22, and asserted that the specifically claimed percentage of liquefied gas in the aerosol composition would have been well within the skill of an artisan. However, the MPEP does not allow such an assertion to support a case of obviousness, unless there is some objective reason to modify the references. The only additional support the Office has provided is that “an artisan would have been motivated to do this in order to develop the most safe and effective invention.” This assertion is not an objection reason, but rather a mere conclusory statement, because it provides no support for why one of skill in the art would select the percentages claimed in claim 22. Therefore, for at least this reason, claim 22 is not disclosed or suggested by the cited references.

Furthermore, the specific amount of liquefied gas (claim 22) or compressed gas (claim 24) is important when the aerosol dispersing device is made. The specification states that when the amount of compressed gas contained in the aerosol product is less than 0.1% by weight, the pressure of the product is dropped and the injection cannot be carried out. See specification page 7, lines 18-20. When the amount of liquefied gas is more than 70% by weight in the aerosol composition, a feeling of cooling is increased so that a feeling of use is deteriorated. See specification page 7, lines 26-27. In addition, since the pressure of the product is raised when the amount of liquefied gas is more than 70% by weight, the stop time is shortened and the ratio of the injection time to the stop time exceeds 5.0. Even if the ratio of the injection time to the stop time is 0.1 to 5.0, both the injection time and the stop time are shortened and a cycle of injection and stop exceeds 25 times for one second so that the state close to continuous injection occurs.

In the present invention, the adequate amount of liquefied gas or compressed gas is contained in the aerosol container. As a result, an injection time and a stop time are repeated at a specific ratio when an injection button is operated, thereby intermittently injecting a content onto skin, for example head skin, accurately and obtaining an excellent massage effect. Accordingly, the specification limitations of claim 22 would not be well within the skill of one in the art, because the Office has provided no objective reason as to why one of skill in the art would modify the references to arrive at the claimed limitations. Therefore, for at least the reasons discussed above, claim 22 is not disclosed or suggested by the cited references.

Independent claim 24 contains limitations similar to those recited in claim 22, and is rejected for the same reasons as claim 22. Therefore, for at least the reasons discussed above, claim 24 is not disclosed or suggested by the cited references.

**New Claims 25-28**

New claims 25-28 ultimately depend from an independent claim, and therefore are believed to be novel and nonobvious over the cited references at least in view of their dependencies.

**Conclusion**

For at least the foregoing reasons, the present application is believed to be in condition for allowance, and such action is earnestly solicited. The undersigned hereby authorizes the Commissioner to charge Deposit Account No. 23-0442 for any fee deficiency required to submit this response.

Respectfully submitted,

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